

# **TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL**

LSA Document #01-265(F)

## **DIGEST**

Adds 11 IAC to implement IC 24-4.7 concerning telephone solicitation of consumers. Adds 11 IAC 1-1-2 defining “contract made under a telephone sales call”, 11 IAC 1-1-4 defining “express request”, 11 IAC 1-1-6 defining “residential telephone number”, and 11 IAC 1-1-7 defining “residential telephone subscriber”. Adds 11 IAC 1-2-1 requiring telephone solicitors to keep certain information regarding telephone solicitations as part of the solicitors’ business records. Adds 11 IAC 1-2-3 providing for the consumer protection division’s access to telephone solicitors’ records regarding telephone solicitations. Adds 11 IAC 1-3-1 establishing mitigating factors that may be considered by the attorney general in deciding whether to seek civil penalties for violations of IC 24-4.7. Adds 11 IAC 1-4-1 clarifying when the attorney general will consider certain persons to have sufficiently complied with the disclosure requirements of IC 24-4.7-4-2. Adds 11 IAC 2-2 describing the manner in which consumers may register with the telephone privacy list, describing the minimum information consumers must provide to register with the list, establishing deadlines for inclusion of new registrations on the next quarterly publication of the list, and providing the manner in which consumers may revoke the consumer’s registration with the list. Adds 11 IAC 2-3 allowing certain persons who are not consumers to register residential telephone numbers with the telephone privacy list, and prohibiting such persons from registering telephone numbers that are not residential telephone numbers. Adds 11 IAC 2-5 providing for the removal of telephone numbers from the telephone privacy list. Adds 11 IAC 2-6-1 setting the fee for obtaining the telephone privacy list. Adds 11 IAC 2-6-3 requiring the division to make the telephone privacy list available for purchase in printed form. Adds 11 IAC 2-6-4 allowing the division to make the telephone privacy list available for purchase in other than printed form. Adds 11 IAC 2-6-5 establishing the information provided in the telephone privacy list. Adds 11 IAC 2-8 limiting the use of the telephone privacy list by telephone solicitors and persons generally. Incorporates by reference definitions set forth at IC 24-4.7-2. Effective 30 days after filing with the secretary of state.

## **11 IAC**

SECTION 1. 11 IAC IS ADDED TO READ AS FOLLOWS:

### **TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL**

#### **ARTICLE 1. TELEPHONE SOLICITATIONS**

##### **Rule 1. Definitions**

###### **11 IAC 1-1-1 Applicability**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-2

**Sec. 1.** The definitions set forth at IC 24-4.7-2, as supplemented in this rule, apply throughout this title. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-1*)

###### **11 IAC 1-1-2 “Contract made under a telephone sales call” defined**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-4-4; IC 24-4.7-4-5

**Sec. 2.** For the purposes of IC 24-4.7-4-4 and IC 24-4.7-4-5, a “contract made under a telephone sales call” does not include a contract for the sale, purchase, or mortgage of real estate if:

- (1) the sale, purchase, or mortgage of real estate is not completed; and
- (2) the payment or authorization of payment is not required;

solely as a result of the telephone sales call. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-2*)

**11 IAC 1-1-3 “Division” defined**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-2-4

**Sec. 3.** As used in this title, “division” refers to the consumer protection division of the office of the attorney general. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3*)

**11 IAC 1-1-4 “Express request” defined**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-1-1

**Sec. 4.** For the purposes of IC 24-4.7-1-1, “express request” means a specific grant of authority made by a residential telephone subscriber at a verifiable date and time authorizing a telephone solicitor to make a telephone sales call to the residential telephone subscriber’s residential telephone number. The grant of authority:

- (1) shall not be included as a condition of a contract for the sale of consumer goods or services;
- (2) shall not be given by a person other than the residential telephone subscriber to whom the call will be made; and
- (3) if in writing, must be set forth in a document that:
  - (A) is separate from any written contract between the residential telephone subscriber and the telephone solicitor authorized to make the telephone sales call;
  - (B) is printed in 12-point boldface type or larger; and
  - (C) contains only the grant of authority.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-4*)

**11 IAC 1-1-5 “Person” defined**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 4-6-9-8; IC 24-4.7-3-7

**Sec. 5.** As used in this title, “person” means an individual, an incorporated or unincorporated organization, an association, or any other legal entity. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-5*)

**11 IAC 1-1-6 “Residential telephone number” defined**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7

**Sec. 6.** As used in this title and for the purposes of IC 24-4.7, “residential telephone number” means a number held or used by a residential telephone subscriber that terminates at that subscriber’s place of residence.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-6*)

**11 IAC 1-1-7 “Residential telephone subscriber” defined**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7

**Sec. 7.** As used in this title and for the purposes of IC 24-4.7, “residential telephone subscriber” means an individual:

- (1) who has subscribed to telephone service terminating at that individual’s residence, or the individual’s spouse; or
- (2) for whose use another person subscribes to telephone service terminating at the individual’s place of residence.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-7*)

**11 IAC 1-1-8 “Telephone privacy list” defined**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3

**Sec. 8.** As used in this title, “telephone privacy list” refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-8)*

## **Rule 2. Telephone Solicitors’ Maintenance of Records Related to Telephone Sales Solicitations**

### **11 IAC 1-2-1 Telephone solicitors’ required records**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7

**Sec. 1.** A telephone solicitor subject to IC 24-4.7 shall keep the following information as part of its business records:

- (1) the name and telephone number of each consumer contacted by a telephone sales call;
- (2) all substantially different advertising, brochures, telemarketing scripts, and promotional materials used in its solicitation of the consumer;
- (3) all express requests authorizing the telephone solicitor to contact the consumer; and
- (4) for all current and former employees directly involved in telephone sales, the employee’s:
  - (A) name;
  - (B) last known home address;
  - (C) last known telephone number; and
  - (D) job title(s).

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-1)*

### **11 IAC 1-2-2 Length of time telephone solicitors must retain records**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7

**Sec. 2.** A telephone solicitor shall keep the information in section 1 of this rule for two (2) years following the date the information first becomes part of its records. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-2)*

### **11 IAC 1-2-3 Attorney General's access to solicitor’s records**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7

**Sec. 3.** Within ten (10) days of an oral or written request by the division, a telephone solicitor shall make the records it keeps pursuant to this rule available for inspection and copying by the attorney general during normal business hours. This section does not limit the attorney general's ability to inspect and copy material pursuant to any other means authorized by law. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-3)*

## **Rule 3. Enforcement of Violations of IC 24-4.7**

### **11 IAC 1-3-1 Mitigating factors**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-2; IC 24-4.7-4; IC 24-4.7-5

**Sec. 1.** In any proceeding brought against a telephone solicitor by the attorney general under IC 24-4.7-5, the attorney general may consider the following as mitigating factors in the attorney general’s decision to seek civil penalties under IC 24-4.7-5:

- (1) That the defendant has obtained, from the division or the agent with which the division has contracted under IC 24-4.7-3-2, the most recently published telephone privacy list.
- (2) That the defendant has maintained the records required by 11 IAC 1-2-1.
- (3) That the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of IC 24-4.7-4.

**(4) That the defendant has not previously been found to have violated IC 24-4.7.**  
*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-3-1)*

#### **Rule 4. Charitable Solicitor's Disclosure**

##### **11 IAC 1-4-1 Charitable solicitor's disclosure**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 23-7-8-1; IC 24-4.7-4-2

**Sec. 2.** The attorney general shall consider a person engaged in noncommercial speech, including a professional fundraiser consultant or solicitor as defined at IC 23-7-8-1 who calls on behalf of such charitable organization, to have sufficiently complied with IC 24-4.7-4-2 if the person makes the disclosures required by IC 24-4.7-4-2 before requesting a donation. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-4-1)*

### **ARTICLE 2. PROVISION OF LISTING OF TELEPHONE NUMBERS NOT TO BE SOLICITED**

#### **Rule 1. Applicability**

##### **11 IAC 2-1-1 Applicability**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3

**Sec. 1.** This article governs the division's provision of the telephone privacy list. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-1-1)*

#### **Rule 2. Consumer Registration with the Telephone Privacy List**

##### **11 IAC 2-2-1 Manner of consumer registration**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-2

**Sec. 1.** A consumer who resides in Indiana may request that his or her residential telephone number or numbers be added to the telephone privacy list by submitting a request in any manner provided by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, which may include any of the following:

- (1) Completing a written form designed by the division, or the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list.
- (2) Calling a toll-free number established by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list, and providing all the information requested.
- (3) Accessing the appropriate Internet site established by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list and inputting the proper data requested by the Web site prompts.
- (4) Submitting a request in any other format that the division or the agent with which the division has contracted under IC 24-4.7-3-2 may from time to time establish.

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-1)*

##### **11 IAC 2-2-2 Required information for consumer registration**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3

**Sec. 2.** Any method of registering with the telephone privacy list shall require the consumer to provide, at a minimum, the following information:

- (1) The consumer's name.
- (2) The residential telephone number or numbers the consumer wishes to register with the telephone privacy

list.

**(3) The consumer's address.**

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-2)*

**11 IAC 2-2-3 Deadline for telephone numbers' inclusion in next quarterly publication of telephone privacy list**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1

**Sec. 3. The telephone numbers of properly completed requests for registration with the telephone privacy list shall become part of the telephone privacy list in the quarter following the deadline for receipt of registration requests according to the following schedule:**

<u>Calendar Quarter</u>	<u>Receipt Deadline</u>
January–March	November 1
April–June	February 1
July–September	May 1
October–December	August 1

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-3)*

**11 IAC 2-2-4 Consumers' revocation of registration**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-2

**Sec. 4. A consumer may remove his or her residential telephone number or numbers from the telephone privacy list by submitting a revocation notice for the number or numbers to the division or the agent with which the division has contracted under IC 24-4.7-3-2. Such request may be submitted in any manner established by the division as described in section 1 of this rule, and must contain at least the information required in section 2 of this rule.** *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-4)*

**Rule 3. Registration with the Telephone Privacy List by Persons Not Consumers, but Holding or Controlling Residential Telephone Numbers Used by Consumers**

**11 IAC 2-3-1 Registration by persons not consumers**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3

**Sec. 1. A person who is not a consumer, but who subscribes to residential telephone numbers used by consumers, may register such numbers with the telephone privacy list in any manner established by the division as described in 11 IAC 2-2-1.** *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-3-1)*

**11 IAC 2-3-2 Prohibition against registration of nonresidential telephone numbers**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 2. A person described in section 1 of this rule may not register telephone numbers that are not residential telephone numbers.** *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-3-2)*

**Rule 4. Consumers and Persons Submitting More than 10 Residential Telephone Numbers for Registration with the Telephone Privacy List**

**11 IAC 2-4-1 Registration of more than 10 telephone numbers**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 1. A consumer, or a person described in 11 IAC 2-3-1, may register more than ten (10) residential telephone**

numbers with the telephone privacy list if the consumer or person provides:

- (1) the consumer's or person's name;
- (2) the residential telephone numbers the consumer or person wants to register with the telephone privacy list;
- and
- (3) the consumer's or person's address;

in any manner established by the division for registering more than ten (10) such numbers. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-4-1*)

#### **Rule 5. Removal of Telephone Numbers from the Telephone Privacy List**

##### **11 IAC 2-5-1 Division's authority to purge non-residential telephone numbers**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 1.** The division may purge or may direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge from the telephone privacy list any number that is not a residential telephone number. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-1*)

##### **11 IAC 2-5-2 Division's authority to purge telephone numbers no longer assigned to consumer**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 2.** The division may purge or may direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge from the telephone privacy list a residential telephone number if the division learns that the number is no longer assigned to the consumer who registered the number. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-2*)

##### **11 IAC 2-5-3 Purging registered telephone number upon consumer's revocation notice**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 3.** The division shall purge or shall direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge a residential telephone number of a consumer who submits the revocation notice described in 11 IAC 2-2-4. Upon receiving such revocation notice, the division will remove the relevant telephone number from the telephone privacy list according to the same schedule used for adding residential telephone numbers to the telephone privacy list. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-3*)

#### **Rule 6. Access to the Telephone Privacy List**

##### **11 IAC 2-6-1 Fee for obtaining telephone privacy list**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1

**Sec. 1.** The fee for obtaining the telephone privacy list is three hundred dollars (\$300). The person paying this fee is entitled to four (4) quarterly publications of the telephone privacy list. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-1*)

##### **11 IAC 2-6-2 Requirements for obtaining telephone privacy list**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 2.** A person may obtain a copy of the telephone privacy list established under IC 24-4.7-3 by:

- (1) paying the fee set forth at section 1 of this rule; and
- (2) providing the information requested by the division or by the agent with which the division has contracted pursuant to IC 24-4.7-3-2.

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-2)*

**11 IAC 2-6-3 Division's provision of telephone privacy list in printed form**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 3.** The division shall make a printed copy of the telephone privacy list available for purchase by persons complying with section 2 of this rule. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-3)*

**11 IAC 2-6-4 Division's provision of telephone privacy list in non-printed form**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2; IC 24-4.7-4

**Sec. 4.** The division may make the telephone privacy list available for purchase in other forms by persons complying with section 2 of this rule if the division determines that such additional forms will further the efficient dissemination of the telephone privacy list and encourage compliance with IC 24-4.7-4 or this title. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-4)*

**11 IAC 2-6-5 Information contained in published telephone privacy list**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2

**Sec. 5.** The telephone privacy list published by the division shall, regardless of its form, contain only the residential telephone numbers that telephone solicitors are prohibited from calling under IC 24-4.7-4. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-5)*

**Rule 7. Inclusion of National Database into Telephone Privacy List**

**11 IAC 2-7-1 Inclusion of national database into telephone privacy list**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7-3-1; IC 24-4.7-3-2; IC 24-4.7-4-3

**Sec. 1.** If, pursuant to 42 U.S.C. 227(c)(3), the Federal Communications Commission establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations, the division shall include the part of such single national data base that relates to Indiana in the data base established under IC 24-4.7-4-3. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-7-1)*

**Rule 8. Use of the Telephone Privacy List**

**11 IAC 2-8-1 Telephone solicitors' use of the telephone privacy list**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7

**Sec. 1.** A telephone solicitor shall not use the telephone privacy list, or the information accepted by the division in compiling it, for any purpose other than complying with IC 24-4.7, in a proceeding or action brought under IC 24-4.7, or with this title. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-8-1)*

**11 IAC 2-8-2 Limits to commercial use of telephone privacy list**

**Authority:** IC 4-6-9-8; IC 24-4.7-3-7

**Affected:** IC 24-4.7

**Sec. 2.** A person shall not use the telephone privacy list, or the information accepted by the division in compiling it, for any commercial purpose other than telephone solicitations made in compliance with IC 24-4.7 and this title. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-8-2)*

